IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 520 (SS) of 2006

Krishan Chandra Sharma,
S/o late Sri Ram Krishna Sharma,
R/o Village –Punchur,
P.O. –Edakhal,
Tehsil –Lansdown,
District – Pauri Garhwal,
Working as Follower,
Officer of Senior Superintendent of Police
Nainital, Uttaranchal. **…….Petitioner.**

Versus

1. State of U.P. through Principal Secretary (Home), Government of U.P., Lucknow, U.P.
2. Inspector General of Police (Administration) U.P. Police Headquarters, Allahabad, U.P.
3. Deputy Inspector General of Police (Personnel), U.P. Police Headquarters, Allahabad, U.P.
4. State of Uttarakhand through Principal Secretary (Home) Government of Uttarakhand, Dehradun.
5. Additional Director General of Police (Administration) Office of Director General of Police, Uttaranchal, Dehradun.
6. Senior Superintendent of Police, Nainital.

……..Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri H.C. Bisht, learned counsel for the petitioner Smt. Beena Pandey, learned standing counsel for the State of Uttar Pradesh on behalf of respondents no.1 to 3 and Sri N.P. Shah, learned standing counsel for State of Uttarakhand on behalf of respondents no. 4 to 6.

By means of this writ petition, the petitioner has prayed for the following reliefs:

a. *Issue a writ order or direction in the nature of Certiorari quashing the impugned letter No. D.G. Saat-161 -2006 (7) dated 20.02.2006 (Annexure No. 13) issued under the signature of Deputy Superintendent of Police (M) Personnel Office of DG, Police, Uttaranchal, Dehradun.*

b. *Issue a writ order or direction in the nature of Mandamus commanding the respondent no. 4 to 6 to appoint the petitioner as Constable (Ministerial) with effect from either 27.07.1995 i.e. the date from which he was appointed to the post of Follower or with effect from 18.06.1996 i.e. the date on which similarly placed Sri Nandan Singh Negi was appointed in the post of Constable (Ministerial) which would be in consonance with the decision of this Hon'ble Court in Writ Petition No. 374 (SS) of 2004 and Writ Petition No. 564 (SS) of 2004 which is equally applicable to the petitioner.*

c. *issue any other writ, order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case in favour of the petitioner.*

d. *award the cost of the petition to the petitioner.*

The submission of the learned counsel for the petitioner is that petitioner's father late Sri Ram Krishna Sharma was expired on 24.07.1975 while serving as Constable in Civil Police posted at Bazpur, District- Udham Singh Nagar (at the relevant time District-Nainital). At the time of petitioner's father death petitioner was one year old, consequently, there was no request from family of petitioner for providing appointment under Dying in Harness Rules.

After passing intermediate examination from U.P. Board in the yare 1991 and attaining the age of 18 years in the year

1992 petitioner applied for the post of Constable (Ministerial) under Dying in Harness Rules to the Police Department, Government of U.P. Petitioner furnished all the relevant information and document including certificate of educational qualification, physical standards and medical certificate of fitness issued by Chief Medical Officer, Pauri.

Petitioner was fully eligible for appointment to the post of Constable (Ministerial). Respondent no. 6 i.e. Senior Superintendent of Police, Nainital after satisfying himself about petitioner's eligibility for the post of Constable (Ministerial) forwarded all the relevant documents to Deputy Inspector General of Police (Personnel) U.P. Police Headquarter, Allahabad vide letter dated 16.04.1993. Vide order dated 27.07.1995, petitioner was appointed on the post of Follower which is Class IV post in the Police Department. Petitioner having no experience and knowledge in this regard coupled with the urgency to get employment in the face of acute financial hardship was compelled to join the service offered by the Department.

Later on, petitioner came to know that he could have been appointed on the post of Constable (Ministerial) and in fact, some of the petitions had been appointed by the respondents as Constable (Ministerial) under Dying in Harness Rules. Petitioner made representation after representation, however, no heed was paid by the respondents and he was constrained to file present writ petition.

Counter affidavit and supplementary counter affidavit have been filed by the respondents to which petitioner has filed rejoinder affidavit.

In the counter affidavit, it is stated by the respondents that since the application for compassionate appointment was made by the petitioner after about 19 years of petitioner's father death permission was obtained from State Government, as the application for employment of the petitioner was not made within five years from the dated of death Government Servant as required under Rules 5 of U.P. Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974, and petitioner was provided appointment on class IV post.

Petitioner joined on the Post of Follower under Dying in Harness Rules in the year 1995 and now after about 11 years he has taken stand that he should have been appointed by the respondents according to his educational qualification on the post of Constable (Ministerial).

Learned counsel for the petitioner has submitted that he has made representation after representation before respondents for consideration of his case, however, respondents have not paid any heed.

In the counter affidavit, respondents have submitted that petitioner has not submitted any representation before them.

Learned counsel for the petitioner has submitted that action of the respondents by appointing the petitioner as Follower, which is Class IV post and later on the appointing some other persons under Dying in Harness on the post of Constable (Ministerial) which is class III post amounts to hostile discrimination. He has further submitted that when the recruitment to post is made under government statutory rules as is the case of petitioner the said rules must be strictly adhere

to or else the appointment would be stuck down for not being in conformity with the statutory rules.

Rule 5 of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 provides as under:

State Government shall on making an application for the purpose be given a suitable employment in the Government service on a post except the post which is within the preview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

i. *fulfils the educational qualification prescribed for the post.*

ii. *is otherwise qualified for the Government service and*

iii. *makes the application for employment within five years from the date of the death of the government servants*

Since the petitioner has not made application within five years, the department obtained permission of State Government under the provision of the aforesaid rules and after obtaining permission from the State Government has given appointment to petitioner on the post of Follower.

The object of the compassionate appointment as held by Hon'ble Supreme Court in catena of judgments is to enable the penurious family of the deceased employee to tide over the sudden financial crisis resulting due to death of the bread earner. Once the petitioner has accepted the appointed on Class IV post and joined, his claim under the Rules came to end. The family of the employee who died in harness was appointed

with source of livelihood. The Rules do not provided for any subsequent change.

Learned counsel for the petitioner could not point out any Rule under which a person given the benefit of Rule once could claim a different of higher post.

In the present case, petitioner was appointed in the year 1995 on the post of Follower and after about 11 years he cannot claim for subsequent change for the post under Dying in Harness Rules.

For the reasons recorded above, writ petition devoid of merit, as such, is dismissed. No order as to costs.

(M.M. Ghildiyal, J)

March 22, 2007
Sksharma

Hon'ble J.C.S. Rawat, J.

(Restoration Appl. No. 12740/06)

This is an application to recall the order dated 29.09.2006 dismissing the writ petition for want of prosecution.

I have gone through the affidavit filed alongwith the application and found sufficient ground to recall the order.

Accordingly, the application is allowed. The order dated 29.09.2006 is hereby recalled and the writ petition is restored to its original number.

(J.C.S. Rawat, J.)

Dt. : 13.10.2006

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